

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT MIX,

Plaintiff,

-vs-

05-CV-503C

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

On April 6, 2007, plaintiff obtained a favorable judgment from the court remanding his claim for disability insurance benefits to the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g). Subsequently, he filed a motion for attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d). The parties have agreed to an EAJA award of \$4,337.51 in fees, plus \$250.00 in costs. The defendant does not contest the amount of the EAJA award and opposes the motion only to the extent that plaintiff's counsel seeks to have the award paid directly to him.

This is one of several similar cases before the court in which the defendant has argued that an EAJA fee award must be paid to the plaintiff as the prevailing party. Based on the language of the statute, the legislative intent to encourage the representation of Social Security claimants, and an examination of other fee-shifting statutes, the court finds that the EAJA fee award is to be paid to the attorney. For the reasons stated in this court's decision in the case *Garner v. Astrue*, 06-CV-769, filed June 4, 2008, the plaintiff's motion is granted. Plaintiff is awarded \$4,587.51 in fees and costs to be made payable to Kenneth R. Hiller, Esq.

So ordered.

\s\ John T. Curtin

JOHN T. CURTIN

United States District Judge

Dated: June 5 , 2008
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